

Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing to adopt new PCX Rule 1.21(d), which would provide that no person, associated person, or group of associated persons may directly or indirectly beneficially own, or control the voting rights of, more than 15% of the number of authorized memberships of the Exchange. However, under the proposed rule change, exceptions to the 15% limit are permitted if they are expressly authorized by the Exchange's Board through a two-thirds majority of those Governors voting at a meeting at which a quorum is present, provided that such authorization must be approved by not less than a majority of all Governors. The Exchange represents that it currently has 552 authorized PCX memberships. Therefore, the seat ownership limit under the proposed rule change would be 82.

The proposed rule change further provides that in the event that a person, associated person, or group of associated persons acquires beneficial ownership of, or controls the voting rights of, memberships in excess of the 15% limit as a result of a merger or acquisition of a member firm, then the following will apply: (i) Such person, associated person, or group of associated persons will not be entitled to exercise any voting rights attached to any memberships in excess of 15% of the number of authorized memberships; and (ii) such person, associated person, or group of associated persons must reduce the number of memberships beneficially owned to comply with this proposed rule within two years.

The Exchange represents that the proposed rule change is intended to assure that the Exchange's memberships do not become unduly concentrated and thereby subject to domination by a particular member or member organization's own interest.

2. Statutory Basis

The PCX believes that the proposal is consistent with Section 6(b) of the Act,<sup>3</sup> in general, and furthers the objectives of Section 6(b)(3) of the Act<sup>4</sup> in particular, in that it is designed to assure that the Exchange maintains a fair

representation of its members in the selection of its directors and administration of its affairs. The Exchange further believes that the proposal furthers the objectives of Section 6(b)(5) of the Act<sup>5</sup> in that it is designed to promote just and equitable principles of trade and in general, to protect investors and the public interest.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or;

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to file number SR-PCX-2002-11 and should be submitted by May 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

Margaret H. McFarland,

Deputy Secretary.

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**OFFICE OF SPECIAL COUNSEL**

**Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies**

**AGENCY:** United States Office of Special Counsel

**ACTION:** Draft Report and Guidelines

**SUMMARY:** The U.S. Office of Special Counsel (OSC) is publishing its draft report to the Office of Management and Budget (OMB), including proposed guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of certain information disseminated by the agency to the public. This draft report is published pursuant to guidelines issued by OMB to federal agencies. See 66 FR 49718 (September 28, 2001) (Final Guidelines, with Request for Comments) and 67 FR 369 (January 3, 2002) (Final Guidelines), as corrected and/or amended at 67 FR 5365 (February 5, 2002), 67 FR 8452 (February 22, 2002), and 67 FR 9797 (March 4, 2002). OMB issued its guidelines under section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554, 114 Stat. 2763). The guidelines call for each agency to develop a draft report to OMB, including agency guidelines designed to ensure the quality, objectivity, utility, and integrity of certain information disseminated by the agency to the public. The draft agency report and guidelines must be published in the Federal Register and posted on the agency's web site by May 1, 2002, for public comment. After reviewing any public comments received, and making any appropriate changes, each agency must send the final draft of its report and guidelines to OMB for review by July 1, 2002. The final agency report and guidelines must be published in the

<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(3).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

Federal Register and posted on the agency's web site by October 1, 2002.

**DATES:** Public comments on the draft OSC report and guidelines published in this notice must be postmarked or sent by electronic mail on or before June 1, 2002, to the addresses provided below.

**ADDRESSES:** Comments on the draft OSC report and guidelines should be sent by regular mail or electronic mail to the agency's Planning and Advice Division. Comments sent by regular mail should be addressed to: Sharyn Danch, Planning and Advice Division, Office of Special Counsel, 1730 M Street, N.W., Suite 201, Washington, DC 20036-4505; comments sent by electronic mail should be addressed to [info\\_quality@osc.gov](mailto:info_quality@osc.gov). All comments received will be included in the official record of this action

**FOR FURTHER INFORMATION CONTACT:** Sharyn Danch, by mail (Planning and Advice Division, Office of Special Counsel, 1730 M Street, N.W., Suite 201, Washington, DC 20036-4505), or electronic mail ([info\\_quality@osc.gov](mailto:info_quality@osc.gov)). The draft OSC report and guidelines in this notice are available on the agency's web site, at [www.osc.gov](http://www.osc.gov) (at the "Reading Room" link on the home page).

**SUPPLEMENTARY INFORMATION:** In its guidelines implementing section 515 of Public Law 106-554, OMB provides that each agency should: (1) Develop information resources management procedures and issue quality guidelines to ensure the quality, objectivity, utility and integrity of information disseminated by the agency to the public; (2) establish administrative mechanisms for affected persons to seek and obtain the correction of disseminated information that does not comply with OMB or agency guidelines; and (3) report annually to OMB on requests for correction received by the agency, and the resolution of those requests. OMB advises agencies to use common sense in adapting its guidelines to information disseminated to the public, by reference to the nature and importance of the information involved. Finally, OMB encourages agencies to incorporate standards and procedures required by its guidelines into existing agency information management and administrative practices under applicable laws and OMB circulars.

OSC's draft report to OMB, with proposed agency guidelines, follows:

## **Report to the Office of Management and Budget On Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Office of Special Counsel**

### **Introduction**

This report is submitted to the Office of Management and Budget (OMB) by the U.S. Office of Special Counsel (OSC) pursuant to section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554, 114 Stat. 2763), and implementing OMB guidelines. This report includes OSC's proposed "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Office of Special Counsel (OSC)."

### **Agency Background**

OSC is a small (approximately 106 full-time equivalent employees), independent federal investigative and prosecutorial agency. First established in 1979, it became an independent federal agency with enactment of the Whistleblower Protection Act of 1989. Basic OSC authorities and responsibilities are defined at 5 USC 1211, *et seq.*

OSC's primary mission is to safeguard the merit system in federal employment, by protecting current and former federal employees and applicants for federal employment from certain prohibited employment practices, especially reprisal for whistleblowing. The agency also facilitates disclosures (by current and former federal employees and applicants for federal employment) of wrongdoing in the federal government, and enforces restrictions on political activity by covered federal, state, and local government employees. OSC carries out this mission by:

1. investigating complaints of prohibited employment practices, especially reprisal for whistleblowing, and pursuing remedies for violations;
2. operating an independent and secure channel for disclosure and investigation of wrongdoing in federal agencies;
3. providing advisory opinions on, and enforcing, Hatch Act restrictions on political activity by covered federal, state, and local government employees;
4. protecting the rights of veterans under the Uniformed Services Employment and Reemployment Rights Act; and
5. promoting greater understanding of the rights and responsibilities of government employees under the laws enforced by OSC.

### **Information Disseminated by OSC**

OSC maintains an active outreach program that disseminates a variety of information about the agency's jurisdiction, programs, and operations. Primary target audiences for these outreach efforts are current and former federal government employees, applicants for federal employment, employee representatives, and state and local government employees (i.e., persons affected by or interested in the laws and regulations enforced by OSC). OSC uses a variety of tools in these efforts, including the agency web site (at [www.osc.gov](http://www.osc.gov)), brochures, posters, fact sheets, press releases, and provision of agency employees as speakers at training conferences and meetings.

OSC does not usually disseminate information to the public, as such. Press releases are issued by the Special Counsel, but these types of documents are excluded from coverage under the OMB guidelines. Other information is available to the public, primarily by means of the agency web site, but usually as a by-product of dissemination of that information to target audiences, transmittal of reports to Congress and other agencies, publication of regulations and required notices in the Federal Register, and OSC's performance of its statutory duties (e.g., transmittal of reports to the President and Congress on whistleblower disclosures, filing of pleadings in litigation, and congressional testimony). Nevertheless, to the extent that OSC disseminates covered information to the public, agency guidelines will be in place pursuant to Public Law 106-554 and implementing OMB guidelines.

### **Agency Guidelines**

OSC has always maintained high standards of quality in the production of any information to be disseminated outside the agency. The agency information quality guidelines included in this report formally incorporate in writing a basic standard of quality (including objectivity, utility, and integrity) into the development and dissemination by OSC of information to the public. To ensure and maximize the quality, objectivity, utility, and integrity of any such information, the OSC guidelines provide for administrative review by the head of the program unit developing the information, and periodic reviews thereafter to ensure that the information is current. After review by the head of the program unit, the information will also be reviewed by the Deputy Special Counsel, the Special Counsel, or a designated representative before public dissemination.

The guidelines also provide for administrative mechanisms allowing affected members of the public to seek and obtain appropriate correction of information maintained and disseminated by OSC if the information does not comply with OMB or agency guidelines. The mechanisms established by OSC provide for receipt and review of such requests by high-level management officials.

### **Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Office of Special Counsel (OSC)**

#### **I. Authority**

Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554, 114 Stat. 2763), section 515; Office of Management and Budget guidelines, at 66 FR 49718 (September 28, 2001) (Final Guidelines, with Request for Comments) and 67 FR 369 (January 3, 2002) (Final Guidelines), as corrected and/or amended at 67 FR 5365 (February 5, 2002), 67 FR 8452 (February 22, 2002), and 67 FR 9797 (March 4, 2002).

#### **II. Definitions**

Terms used in these guidelines are defined by reference to definitions in OMB guidelines as follows:

1. "Quality" includes the utility, objectivity, and integrity of information.

2. "Utility" refers to the usefulness of information not only to OSC, but also to its intended users, including the public.

3. "Objectivity," as applied to both presentation and substance, includes whether disseminated information is being presented in an accurate, clear, complete, unbiased manner, in a proper context, and with identification of sources (to the extent possible, consistent with confidentiality protections)

4. "Integrity" refers to the security of information (that is, protection of the information from unauthorized access or revision, to ensure that it is not compromised through corruption or falsification).

5. "Information" means any communication or representation of knowledge, such as facts or data, in any medium or form, including textual, numerical, graphic, narrative, or audiovisual forms. It includes information disseminated on the OSC web page, but does not include the provision of hyperlinks to information that others disseminate. The term also does not include opinions, where the agency's presentation makes it clear that what is being offered is someone's

opinion rather than fact or the agency's views.

6. "Dissemination" means agency-initiated or -sponsored distribution of information to the public (see 5 CFR 1320.3(d) (definition of "Conduct or sponsor"). Dissemination does not include distribution limited to government employees or agency contractors or grantees; intra- or inter-agency use or sharing of government information; responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act, or other similar law; distribution limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas or adjudicative processes.

7. "OMB guidelines" means the "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies" issued by OMB pursuant to section 515 of Public Law 106-554.

#### **III. Summary**

These OSC guidelines formally incorporate a basic standard of quality (including objectivity, utility, and integrity) into the development and dissemination of information by the agency to the public. They also include: (1) procedures for reviewing the quality of information before it is disseminated, and for periodically reviewing the information after dissemination to ensure its continuing quality; (2) administrative mechanisms by which affected persons may request, and obtain when appropriate, the correction of information maintained and disseminated by OSC if such information does not conform to OMB or agency guidelines; and (3) procedures for annually reporting to OMB the number and nature of complaints received by OSC about its compliance with OMB guidelines, and how such complaints were resolved.

Pre-dissemination review procedures referred to in item (1) apply to information first disseminated by OSC on or after October 1, 2002. Administrative correction mechanisms referred to in item (2) apply to information disseminated by OSC on or after October 1, 2002, regardless of when OSC first disseminated the information.

Information disseminated to the public by OSC will protect information from or about complainants in prohibited personnel practice matters pursuant to 5 U.S.C. 1212(g); it will also protect information about subjects, witnesses or others, as required or

permitted under the Freedom of Information Act, the Privacy Act, and any other applicable law or regulation. OSC does not develop or disseminate specific categories of information cited by OMB that may require higher and more specific quality standards (e.g., scientific, financial or statistical information, and reports prepared by non-governmental entities).

### **IV. Quality Standards, Administrative Review Procedures, and Administrative Correction Mechanisms**

#### **A. Quality Standards**

(1) **Information should adhere to a basic standard of quality.** The quality (including the objectivity, utility, and integrity) of information to be disseminated by OSC to the public should be an integral component in every phase of the development of such information.

(2) **Information should be objective in substance and presentation.** Accurate, reliable, and unbiased information should be presented in an accurate, clear, complete, unbiased manner, in a proper context, and with identification of sources (to the extent possible, consistent with confidentiality protections). To ensure that the information is objective, it should relate to issues within OSC's jurisdiction, and be based on laws and regulations enforced by the agency or governing its operations, and on its experience in enforcing those laws and regulations.

(3) **Information should be responsive to its intended users.** Information should meet the needs of its intended users, including the public, with due regard for the costs and benefits involved. Needs of intended users will be determined by OSC, in part, through feedback or frequently asked questions at agency outreach activities, and comments received on the agency web site. At a minimum, information developed and disseminated by OSC should, whenever possible, be written in plain, understandable language.

(4) **The integrity of information should be protected.** Protecting public information on OSC's web site from unauthorized access or revision is the responsibility of the agency's Information Systems Branch (ISB). In carrying out that responsibility, ISB will: (a) implement applicable new software patches and security guidelines as recommended by the web site developer and by federal agencies responsible for guidance on information security issues; (b) routinely monitor web server event logs to identify potential breaches of security; and (c) maintain backups of web site and web

server content, to permit OSC to promptly restore the site if its security is threatened or the system fails due to hardware or software error.

#### B. Administrative Review Procedures

The head of the program unit developing information for dissemination to the public is responsible for reviewing its content, and for periodic review of the information to ensure that it is updated to reflect changes in laws and regulations, and recent court decisions. After review by the head of the program unit, such information will be reviewed by the Deputy Special Counsel, the Special Counsel, or a designated representative before dissemination to the public.

#### C. Administrative Correction Mechanisms

Affected members of the public who believe that information disseminated by OSC does not comply with OMB guidelines or these agency guidelines may contact OSC to request a correction of the information. Such persons ("requesters") should write to the Deputy Special Counsel, Office of Special Counsel, 1730 M Street, N.W., Suite 201, Washington, DC 20036-4505. The Deputy Special Counsel will refer the request for response to the program unit responsible for development or maintenance of the information. Initial requests should include all relevant information available to the requester, and a clear statement of the alleged conflict with OMB or OSC guidelines. OSC will reject requests made in bad faith or without justification.

OSC will respond to a request within 30 calendar days after its receipt (or sooner, if it is possible to quickly resolve the request and immediate attention is necessary due to the nature of the information). The program unit to which the request has been referred will respond by letter to the requester. The letter will inform the requester whether OSC believes a correction is appropriate given the nature and timeliness of the information involved, and if so, will provide any corrected information.

If the OSC response is not acceptable to the requester, he or she may appeal the initial decision. The requester must send an appeal within 30 calendar days of the date of OSC's response. It should be addressed to the Deputy Special Counsel (at the address shown in the first paragraph of this section), and must state the reason(s) why the initial decision was not acceptable. If OSC believes that other agencies may have an interest in the resolution of an appeal, it will consult with those agencies about

their possible interest before completing its review of the appeal.

Within 30 calendar days after OSC receives the appeal, the Deputy Special Counsel will respond by letter informing the requester whether the appeal is granted (that is, the letter will state whether a correction is appropriate given the nature and timeliness of the information involved, and if so, will provide any corrected information).

#### D. Reporting Procedures

OSC will send an annual report to OMB describing the number and type of complaints received about OSC's compliance with OMB guidelines, and how such complaints were resolved. OSC will submit its initial report by January 1, 2004.

#### E. Conclusion

The Deputy Special Counsel shall be responsible for ensuring agency compliance with OMB guidelines. These agency guidelines are not intended to create any right or benefit, substantive or procedural, enforceable in any court by a party against OSC, the federal government, or any individual, beyond any that may be established by section 515 of Public Law 106-554 or by implementing OMB guidelines. In particular, these agency guidelines do not impose any additional requirements on OSC during adjudicative proceedings and do not provide parties to such proceedings any additional rights of challenge or appeal.

Dated: April 24, 2002.

**Timothy Hannapel,**

*Deputy Special Counsel.*

[FR Doc. 02-10569 Filed 4-29-02; 8:45 am]

**BILLING CODE 7405-01-M**

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Docket No. OST-2002-11996]

#### Draft Report Implementing OMB's Information Dissemination Quality Guidelines

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice of availability and request for comment.

**SUMMARY:** The Department of Transportation (DOT) is drafting Departmental guidelines to implement section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Pub. L. 106-554). The Office of Management and Budget (OMB) has issued Government-wide guidelines under Section 515 which direct each

Federal agency to establish and implement written procedures to ensure and maximize the quality, utility, objectivity and integrity of the information that they disseminate.

**DATES:** Comments should be submitted by May 31, 2002.

**ADDRESSES:** You may file comments using the Internet by logging in on DOT's Dockets Management System (DMS) website at <http://dms.dot.gov>. Please follow the online instructions for submitting an electronic comment and for reviewing all comments on line. Once received, a notification receipt will be forwarded to you. You may fax your comments to the DMS at (202) 493-2251. You may also submit your comments by mail or in person by sending your comments to the U. S. Department of Transportation (DOT), Office of Dockets and Media Management to the Docket Clerk, Docket No. OST-2002-11996, 400 Seventh Street, SW., Room PL401, Washington, DC 20590-0001. If you would like the Department to acknowledge receipt of your written comments, you must include a self-addressed stamped postcard on which the following statement is made: "Comments on Docket OST-2002-11996." The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Comments should identify the docket number. Written comments should be submitted in duplicate.

The Office of Dockets and Media Management is open for examination and copying, at the above address, from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. All comments received will be available for inspection at the above address.

Please note that due to current mail security procedures affecting U.S. Postal Service delivery to Government offices, commenters may find it advantageous to use an alternative method (the internet, fax, or professional delivery service) to submit comments to the Docket and ensure their timely receipt at the U.S. Department of Transportation.

**FOR FURTHER INFORMATION CONTACT:** Vanester M. Williams, Office of the Chief Information Officer, U. S. Department of Transportation; 202-366-1771 (not a toll-free call) or by email at [vanester.williams@ost.dot.gov](mailto:vanester.williams@ost.dot.gov). For specific inquiries on the Department's administrative mechanisms for allowing persons to seek correction of information, please contact Robert Ashby, Office of the General Counsel, U. S. Department of Transportation; 202-366-9310 (not a toll-free call) or by email at [bob.ashby@ost.dot.gov](mailto:bob.ashby@ost.dot.gov). For specific inquiries on the Department's